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RHMFISS/DEPT OF ENERGY WASHINGTON DC
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UNCLAS SECTION 01 OF 02 CANBERRA 001100

SENSITIVE
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E.O. 12958: N/A

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SUBJECT: AUSTRALIA ANNOUNCES MINOR MODIFICATIONS ON FOREIGN
INVESTMENT

REF: CANBERRA 900

1. (SBU) SUMMARY: Treasurer Wayne Swan announced minor changes to the review framework for foreign investment proposals, in response to findings from a Senate inquiry and confusion among foreign investors, particularly from China. From 2010, major companies will be required to retain local share market listing; the Foreign Investment Review Board (FIRB) will increase from three to four members; and the FIRB will improve communication with foreign investors. Swan maintains the FIRB does not discriminate against Chinese state-owned companies and defended the FIRB's case-by-case approach to vetting investment proposals. Nevertheless, investors have called for a more transparent system and new Opposition Finance spokesman Barnaby Joyce called for a ban on Chinese sovereign investment. END SUMMARY.

Clear message to foreign investors

2. (U) Treasurer Wayne Swan announced on December 10 minor changes to the policy for assessing foreign investment approvals (reftel). Among the changes, Swan will increase the FIRB's membership from three to four members in 2010 and will require major resource companies to remain listed in the Australian Securities Exchange. The announcement was prompted by criticism from a Senate Economics Committee inquiry and apparent confusion from some foreign investors, particularly from China.

3. (U) Swan conceded foreign investment rules could be explained better and called for greater efforts to outline investment policies to overseas investors. He instructed the FIRB to release an easy-to-read version of the foreign investment review framework for prospective investors, which will be available in other languages, including Chinese, Japanese and Bahasa (Indonesia), and to engage with embassies in Australia to explain the policies.

Caps used as guidelines but are not fixed

4. (SBU) FIRB Director Patrick Colmer allegedly told to a Chinese investment audience in September that foreign investors with "significant government ownership" should limit ownership stakes in greenfield resource projects to less than 50% and shares in major

resource companies to 15%. Swan subsequently stated that Colmer's words were taken out of context and made it clear that there should be no fixed caps on the ownership level by foreign investors. Colmer noted to Econoff instances where projects with ownership levels higher than these thresholds have been approved, but acknowledged that while these are not official caps, the FIRB uses them as general guidelines or triggers to focus their reviews.

¶5. (SBU) Nevertheless, investors like Minmetals vice-president Mark Liu have called for a more transparent system, saying foreign investment rules in Australia are "guidelines rather than regulations" and are causing enormous uncertainty. Critics also complain that using vague guidelines allows the GOA to camouflage under the banner of "in the national interest" decisions that are more influenced by politics than policy.

Selling out to China?
Q Selling out to China?

¶6. (SBU) The lack of clear cut guidelines has caused some legitimate confusion, especially among Chinese companies, which, if involved in a large investment project, will likely only know whether their proposed investment is viable after private consultations with the FIRB. New Opposition Finance spokesman Barnaby Joyce, who has strongly criticized Chinese ownership of resource projects, called for a ban on Chinese sovereign investment. Swan defended Chinese investment as positive for Australia.

¶7. (SBU) Comment: The Senate Economics Committee put Treasurer Swan on the defensive and caused him to make minor changes to improve the FIRB's transparency. Swan's response was also meant to defend the

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existing policy from the new Opposition, which is taking a more restrictive position on Chinese parastatal investment. He also sought to reassure international investors, particularly Chinese, that Australia remains open for business. On the core issue, the GOA prefers to retain maximum flexibility on how it handles deals and has steadfastly resisted a clear checklist that could tie its hands.

Instead, the FIRB's broad national interest mandate allows the Government considerable discretion to impose conditions on approvals.

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